

Gopal Lal Vs. Additional District and Sessions Judge and anr.

Gopal Lal Vs. Additional District and Sessions Judge and anr.

SooperKanoon Citation : sooperkanoon.com/483814

Court : Allahabad

Decided On : Jul-23-2002

Reported in : 2002(4)AWC2787

Judge : Anjani Kumar, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25

Appeal No. : C.M.W.P. No. 33440 of 2001

Appellant : Gopal Lal

Respondent : Additional District and Sessions Judge and anr.

Advocate for Def. : A.N. Bhargav, S.C.

Advocate for Pet/Ap. : Rajendra Kumar Srivastava and ;Y.K. Srivastava, Advs.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. This writ petition has been filed by the petitioner-tenant against the order dated 14.9.2001, Annexure-2 to the writ petition, passed by the revisional court, whereby the revisional court has allowed the revision filed by the respondent No. 2 and set aside the order dated 27.3.1999, passed by the trial court.

2. The facts leading to filing of the present writ petition are that the landlord-respondent No. 2, Sharad Chandra Mishra filed a suit bearing Suit No, 156 of 1994 for ejectment of the petitioner-tenant from House No. CK-32/1, 2, 3, Mohalla Nepali Khapra, Varanasi, which is a non-residential accommodation in which one late Smt. Gangajali was the tenant. Originally it was let out to Kedar Nath, who was tenant and after his death, tenancy was inherited by his wife. Kedar Nath had no offspring and the petitioner is his foster son. Gangajali died and the petitioner who is foster son continued in possession and he claimed inheritance in tenancy firstly on the ground of his being foster son and secondly on the strength of a will executed by Gangajali. The trial court decreed the suit in part for arrears of rent holding the petitioner to be the heir who inherited the tenancy. Aggrieved thereby, the plaintiff-landlord approached the revisional court. The revisional court after considering the material and evidence available on record allowed the revision by setting aside the order of the trial court dated 27.3.1999 and the suit of the plaintiff-landlord was decreed for eviction of the petitioner tenant. It is this order, which has been challenged by the petitioner-tenant by means of the present writ petition.

3. The main issue for decision, which is argued by learned counsel for the petitioner, Shri V.K.S. Chaudhary is regarding the question as to whether the petitioner can be said to be entitled to inherit the tenancy rights of deceased Gangajali or not? The trial court has found that the petitioner cannot be said to be the sub-tenant as according to the provisions of Section 3 (a), 3 (g) and 34 (4) of the U. P. Act No. 13 of 1972 and the tenancy will be devolved on the petitioner by Hindu Succession Act and the petitioner would be the heir according to the provisions of Hindu Succession Act, 1956. Learned counsel for the respondent-landlord relied upon a decision in 1997 (1) ARC 467, wherein this Court has held that 'if the tenant has allowed the building in dispute to be occupied by a person who is not the family member, then there will be a deemed vacancy within the meaning of Section 12 (b), 20 (2) (e). read with Section 3 (g) of U. P. Act No. 13 of 1972.' Learned counsel for the petitioner relied upon the decisions of the Apex Court in : AIR 1997 SC628 , wherein Apex Court in para Nos. 20, 21. 22, 23 and 26 has held as under :

'20. 'Son' as understood in common parlance means a natural son born to a person after marriage. It is the direct blood relationship, which is the essence of the term in which 'son' is usually understood, emphasis being on legitimacy. In legal parlance, however, 'son' has a little wider connotation. It may include not only the natural son but also son's son, namely grand child, and where the personal law permits adoption, it also includes an adopted son.

21. Section 3(57) of the General Clauses Act defines 'son' as under ;

'son in the case of any one whose personal law permits adoption, shall include an adopted son.' 22. Relying upon this definition the Lahore High Court In re, Divi Ditto, AIR 1931 Lah 661, held that where the personal law of the parties permits adoption, the word 'son' will include an adopted son. In Adit Narayan Singh v. Mahabir Prasad Tiwari, 48 Ind App 86 : AIR 1921 PC 53, the Privy Council held that 'sons' in Mitakshara Chapter II 6 (1) include a grand son. In the ancient Hindu Law, twelve sons are mentioned by the truth seeing sages all of whom need not be mentioned here. The attempt only is to indicate that the term 'son' itself is a flexible term and may not be limited to the direct descendants. Its true meaning, like the term 'Family' discussed above, will depend upon the context in which it is used. Even illegitimate son may be treated as legitimate, as for example, the son referred to in Section 16 of Hindu Marriage Act as originally enacted.

23. Coming now to 'Foster Son', it may be pointed out that a 'Foster Son' is a son who is not the real son or direct descendant of a person after his marriage.

24. In shorter Oxford Dictionary, 'Foster Son' is defined as 'one brought up as a son though not a son by birth'. The word 'Foster' in the same dictionary, is indicated to mean, to supply with food ; to nourish, feed, support ; to bring up with parental care ; to nurse, tend with care to grow.

25. 'Foster Brother' is a male child nursed at the same breast as, or reared with, another of different parentage. 'Foster Father' is described as one who performs the duty of a father to another's child. 'Foster Mother' is indicated to mean a woman who nurses and brings up another's child, either as an adoptive mother or as a nurse while 'Foster Sister' means a female child nursed at the same breast

as, or reared with, another of different parentage.

26. These definitions indicate that a 'Foster Child' need not be the real legitimate child of the person who brings him up. He is essentially the child of another person but is nursed, reared and brought up by another person as his own son.'

4. In view of the aforesaid law laid down by the Hon'ble Supreme Court, petitioner can be said to be entitled to inherit the tenancy right of deceased Gangajali. So far as the right to inherit the property of deceased Gangajali is concerned, the petitioner cannot claim any inheritance on the basis of a registered Will said to have been executed as the Will has neither been probated nor letters of administration have been issued.

5. In this view of the matter, the petitioner cannot inherit on the either of two counts as stated above. The petitioner is the husband's brother's son of Gangajali. He, therefore, may be the heir under Hindu Succession Act, 1956.

6. Learned counsel for the respondent-landlord has relied upon two decisions of this Court in 1979 ARC 251 and 1999 All CJ 431, wherein this Court has held that the nephew will not be covered by definition of 'Family' and, therefore, if the nephew is found to be in possession of the accommodation, there will be a deemed vacancy within the meaning of Section 3(g), read with Sections 25 and 12 (1) (b) of U. P. Act No. 13 of 1972. Learned counsel for the respondent-landlord further relied upon the decision in 2000 (1) ARC 474, wherein this Court has held that the tenancy cannot be transferred on the basis of a Will. The similar view is taken by this Court in the decisions in 1999 (1) ARC 494 ; 1985 (1) ARC 1. The trial court, therefore, arrived at the finding that the petitioner cannot be said to be the heir of deceased Gangajali within the meaning of Section 3 (g) of U. P. Act No. 13 of 1972 and since it is on record that the petitioner was carrying on business during her lifetime and was in possession after the death of Gangajali, would be covered by definition of heir within the meaning of Section 12 read with Section 3 (g) of U. P. Act No. 13 of 1972.

7. Learned counsel for the petitioner relying upon the definition of the tenant within the meaning of Section 3 (g) has asserted that since in the case of non-residential

accommodation, the definition of tenant includes the heirs and heirs means, heir under the personal law. Learned counsel for the petitioner has further submitted that in case of a non-residential accommodation since all the heirs would become entitled to inherit the tenancy, this should be read as heir according to personal law. In this case, it should be under Hindu Succession Act, 1956.

8. In this view of the matter, learned counsel for the petitioner has submitted that it Gangajali cannot be said to have sub-let, then the suit was liable to be dismissed.

9. Shri B.D. Mandhyan learned counsel for the respondent-landlord then contended that the scope of the revision under Section 25 of Provincial Small Cause Courts Act is limited and relied upon a decision in Ram Narain Arora v. Asha Rani and Ors. : AIR 1998 SC3012 , wherein Hon'ble Supreme Court has held that :

'It is no doubt true that the scope of revision petition under Section 25B (8) proviso of the Delhi Rent Control Act is very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but in a given case the finding of fact is given on a wrong premise of law, certainly it would be open to revisional court to interfere with such a matter.'

10. Learned counsel for the respondent-landlord has further relied upon a decision in 1997 (2) ARC 418, wherein this Court has held that:

'A combined reading of the Clauses (a) and (g) of Section 3 and Sub-section (4) of Section 34 of the Act shows that for the purposes of the proceedings under the Act, the application of personal law has been made for a limited purpose, i.e., for determination of or finding out the heirs or descendants of a tenant or landlord. There is no other provision in the Act or the Rules framed thereunder, which expressly or by necessary implication provides for application of the personal law in the proceedings under the Act.'

11. The definition of family has been given under the Act. This definition of family is different than that which is normally presumed. Similarly there are various provisions, which are specifically defined under the Act.

12. A Division Bench of this Court in the case in *Ram Nath Yadav v. Rent Control and Eviction Officer, Allahabad and Ors.* , has held and answered the question referred to the Division Bench :

'Whether the word 'family' used in Sections 12 (1) (b) and 12 (2), of U. P. Act No. 13 of 1972 should be interpreted with regard to its general meaning as it is understood commonly so as to include daughter-in-law or other female relations who are normally members of the family or it should be given the restricted meaning as defined in Section 3 (g) of the Act?'

The Division Bench answered the aforesaid question that the word 'family' used in Section 12 (1) (b) and 12 (2) of U. P. Act No. 13 of 1972, should be given the meaning as defined in Section 3 (g) of the Act.

13. Learned counsel for the respondent-landlord has further relied upon a decision in 1981 All CJ 152, wherein this Court has held with regard to the definition of 'tenant' that :

'On a reading of Section 3 (a) it is, therefore, clear that so far as non-residential building is concerned, the heirs would include all the heirs of the tenant but in the case of residential building only those heirs would be treated as heirs who normally resided with the tenant at the time of his death in the building. There is no distinction, in my opinion, between the word 'heirs' as used in Section 3 (a) (i) and 3 (a) (ii). The meaning to be given to the word 'heirs' both in Sub-clauses (i) and (ii) therefore, has to be the same.'

Learned single Judge goes on to say that 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

14. Learned counsel for the respondent-landlord further relied upon the decision in 1999 All CJ 431, wherein this Court has specifically held that the nephew of the deceased tenant has no right to occupy the premises let out to his uncle. In this very decision, this Court has held that:

'The Court exercising the power of revision under Section 25 of the Provincial Small Cause Courts Act has no jurisdiction to re-assess the evidence and record its own finding and relied upon a Division Bench decision in 1979 All CJ 473, wherein the Court observed 'if the Court finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the justice of the case may require ; but it has no jurisdiction to re-assess or reappraise the evidence in order to determine an issue of fact for itself. If it cannot proceed without finding on a particular issue of fact, it should send the case back after laying down proper legal guidelines. It cannot enter to evidence, assess it and determine it.'

15. In this view of the matter, learned counsel for the respondent-landlord lastly submitted that the order of the revisional court deserves to be quashed and I am in full agreement with Shri Mandhyan on this aspect of the matter that the revisional court ought to have remanded back the matter to decide the question as to whether the petitioner can be said to be the heir of the deceased Gangajali and should not have decreed the suit, filed by the plaintiff-landlord.

16. In this view of the matter and the observations made above, the writ petition is allowed and the order of the revisional court dated 14.9.2001, is quashed to the extent where it decreed the suit filed by the plaintiff-landlord. The matter is remanded back to the trial court to decide the matter in accordance with law and in the light of the observations made in this judgment. Since the matter is fairly old, trial court is directed to decide the controversy expeditiously.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com